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LETTER DATED 3 OCTOBER 2000 FROM THE PERMANENT REPRESENTATIVE OF ALGERIA TO THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

Mission report on Israel's violations of human rights in the Palestinian territories occupied since 1967, submitted by Mr. Giorgio Giacomelli, Special Rapporteur

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Introduction

1. In response to the recent developments and the acute situation in the occupied Palestinian territories, the Special Rapporteur undertook a mission to the region to ascertain the prevailing human rights conditions. The Commission's subsequent decision to convene the current special session provides the occasion for the Special Rapporteur to bring his findings to the Commission's attention as a reference for its deliberations.

2. The recent mission to the occupied Palestinian territories (OPT) from 11 to 15 October 2000, enabled the Special Rapporteur to consult with a wide range of interlocutors in connection with his mandate. This included meetings in the West Bank, the Gaza Strip and Jerusalem with Palestinian and Israeli NGOs, international organizations on the ground, grassroots and community organizations, human rights monitors, Palestinian Authority representatives, medical professionals and individuals wounded in the recent confrontations. He gathered oral testimony and documentary information, as well as published materials from additional sources. The Special Rapporteur notes with regret that again he was denied the opportunity to consult official Israeli interlocutors, owing to Israel's continuing rejection of the mandate and its refusal to cooperate with the Special Rapporteur.

3. In compliance with the mandate, as formulated by the Commission on Human Rights, this report addresses the subject of military occupation, and actions and omissions of the occupying Power during the unfolding events of late September 2000 until today, 17 October 2000.

4. While concentrating his attention on the terms of reference contained in the mandate, the Special Rapporteur feels he would be remiss in his obligation as a mechanism of the Commission on Human Rights if he were not to draw the attention of the Commission to the fact that, in the very area covered by the mandate and in areas geographically and substantively peripheral to it, other serious violations are being perpetrated. It would be for the Commission to decide how best to address these matters in the interest of faithfully and comprehensively upholding human rights norms.

5. In general, the full range of human rights violations reported in the Special Rapporteur's previous report, to the Commission at its fifty-sixth session (E/CN.4/2000/25), remain constant. However, a number of violations from that spectrum have shown a dramatic upsurge since late September 2000. The Special Rapporteur brings these particular areas to the Commission's attention. He expects to present his regular, comprehensive report to the Commission at its fifty-seventh session, in 2001.

The human rights framework

6. Under the Charter of the United Nations a State Member of the United Nations is obligated to "respect and promote human rights". Additionally, Israel was bound upon its establishment by the terms of General Assembly "partition of Palestine" resolution 181 (II), which states in Part I, chapter 2, paragraph 3: "All persons within the jurisdiction of the [Arab or Jewish] State shall be entitled to equal protection of the law". As the occupying Power in the West Bank, the Gaza Strip and Jerusalem, Israel bears de jure responsibility for implementing

the applicable humanitarian law norms. In the occupied Palestinian territories, Israel bears the responsibilities of the occupying Power, as the Commission on Human Rights recognized in its resolution 1993/2. As the treaty bodies have subsequently reaffirmed, these Israeli jurisdictional obligations remain applicable to date (see CERD/C/304/Add.45 and E/C.12/1/Add.27).

7. Therefore, international humanitarian law obligations apply to this review of Israel's role in the occupied Palestinian territories, including the Hague Regulations and the Geneva Conventions of 1949, in particular the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. In addition, as ratifying Party to the six principal human rights treaties, Israel's covenanted human rights obligations apply, as well as those arising from customary law and general principles of international law. The norms of both customary and treaty law, as well as the relevant resolutions of the United Nations form the legal framework for the concerns raised in this report.

8. It should be noted that the data collected here on specific violations are neither exhaustive nor reflect perfect uniformity among all sources. The Special Rapporteur has sought corroboration of the information in order to establish reasonable certainty of the facts presented to the Commission. Nonetheless, the Special Rapporteur's report here reflects the scale and proportions of the violations committed over the period under review.

Principal concerns regarding human rights

Right to life

9. The occupying Power has dramatically escalated the use of lethal force against the civilian population, ostensibly in response to demonstrations beginning in Jerusalem and spreading throughout the West Bank and Gaza Strip. Occupation forces appear to have indiscriminately used excessive force in cases where there was no imminent threat to their lives. Whether in cases of Israel Defence Forces (IDF) or Israeli police actions, deadly force is used without warning, and without employing deterrence or gradual measures consistent with the minimum standards and methods of crowd control or management of civil unrest. These fundamental human rights and humanitarian norms of necessity and proportionality have been breached in most reported cases of confrontation between Palestinian civilians and Israeli forces.

10. While the various sources consulted may differ to some degree on details, all concur that, since 28 September, Israeli forces have killed at least 85 Palestinians in the occupied Palestinian territories in this way, of whom more than 20 were children (under the age of 18), including small children, as well as two infants, 5 and 6 months old. Israeli settlers in the West Bank are responsible for at least five of these Palestinian deaths over the past 18 days. In some sense the scale of this violation is unprecedented. It is worthy of note that the number of deaths caused by Israeli forces so far approximate the number killed in the first four months of the intifada, in 1987/1988.

11. Depending on the criteria applied by the different sources with regard to the nature and gravity of wounds, various reports estimate between 2,000 and 3,700 Palestinians injured by Israeli occupation forces. Of these, some 40 per cent are under 18 years of age. The total injuries are roughly categorized as resulting from shooting to the head (40 per cent), the

chest (20 per cent), abdomen (20 per cent), extremities and back (20 per cent). Reportedly, at least half of the injuries resulted from Israeli forces using live ammunition, with the remaining injuries due to rubber-coated metal bullets and tear gas (around 10 per cent).

12. In different degrees, these casualties are widely distributed across the occupied Palestinian territories. Approximately, two thirds are found throughout the West Bank and Jerusalem, with the remaining third in the Gaza Strip.

13. Officially verifiable figures for the total number of Israeli casualties were not available. However, Israeli occupying forces, including settlers, to date have been reported to have suffered seven deaths.

Means of force used

14. The Israeli forces have used a variety of methods, including shooting with lethal weapons. In addition to using rubber-coated metal bullets, which at close range have proved lethal, troops have fired rifles and machine guns, deployed tanks, fired rockets and anti-tank missiles, and have employed and fired from helicopter gunships and naval vessels.

15. Many of the casualties are reportedly the result of long-distance shooting by snipers. The Special Rapporteur took eyewitness and victim testimony of the use of this tactic against civilians, some of whom were far from, and uninvolved in, civil demonstrations.

16. It is worth noting that the confrontations with and manoeuvre of IDF forces, in some cases, have disregarded the lines of territorial division agreed upon. This has created some confusion as to the role of the Palestinian civil police, who are meant both to maintain order and to protect the Palestinian population. This is a situation that remains of deep concern and should be the subject of careful study and remedial efforts.

17. Local observers have reported concern over the apparent re-emergence of IDF special undercover units to conduct operations similar to those carried out during the intifada (1987- ca. 1993). At present, the Israeli settler population has emerged as an increasingly obvious source of paramilitary activity, particularly, as local observers have noted, since this year's Paris summit. For instance, settlers have opened fire on local Palestinian neighbourhoods in Jerusalem and in West Bank villages, as noted in shooting incidents reported at Bidya and Za'tara village (near Nablus) and in neighbourhoods adjacent to Pesugot settlement (Jabal Tawil/al-Bireh), which resulted in injuries and one death. Numerous reports indicate that Israeli occupation forces have not acted to deter such paramilitary activities.

18. The situation has become more complex and multifaceted as some new actors, such as the paramilitary settlers, have entered the scene and some Palestinians bearing arms have appeared in the protests. These new factors, within a context of escalating violence, form a particularly alarming development that calls for urgent attention.

19. The emergence of particularly odious and brutal attacks, such as the death by torture of a young Palestinian from Imm Safa village (West Bank, Area C), or mob attacks, as in the case of the 12 October Ramallah killings, give ominous warning as to the new forms of violence that could spin out of control if not properly addressed and remedied.

Right to health

20. In addition to the obvious consequences for the right to health that arise from the use of lethal weapons against civilians, medical professionals have also become targets of IDF gunfire. Israeli forces have obstructed, beaten and/or shot a number of emergency medical personnel on duty. This has led to the denial of emergency medical aid to victims and to the wounding of medical personnel, as well as the death of one ambulance driver, Bassam Bilbaisi.

21. The level and number of casualties have strained local medical services beyond capacity, requiring the transfer of severely injured victims to hospitals in neighbouring countries. The casualties and the Israeli-imposed closure of the occupied Palestinian territories have created a shortage of medical supplies and strained the capacity of medical services. The impossibility of replenishing stocks and the denial of access to needed treatment in neighbouring countries due to closure of the occupied territories have deepened the medical-care crisis at a time of increased need.

Freedom of movement

22. While the right to freedom of movement has been the subject of violations on a sustained basis, particularly since the beginning of the interim period, Israel's current closure of the occupied territories is characterized also by the sealing off of Palestinian populated areas. This has prevented the free movement of people and material into and out of these areas, and has created shortages and a sense of isolation. The besieging of several Palestinian communities has resulted in further fragmentation of the territory and society as a whole and is having a negative impact on the already fragile Palestinian economy. Furthermore, such an acute situation already has consequences for access to education, medical care and livelihood, in addition to lowering morale and contributing to an overall sense of confinement.

23. The day before the Jewish holiday of Yom Kippur, the Israeli authorities closed the occupied Palestinian territories, after which they cancelled all permits for Palestinian workers, prohibiting them access to their jobs in Israel. Subsequently, the Israeli authorities cancelled grade 2 and 3 permits for Palestinians, denying freedom of movement to businessmen and other professionals.

Economic, social and cultural rights

24. Other economic losses include those resulting from the demolition of physical structures, including homes and apartments, as in the case of 40 apartments at Netzarim Junction, the damaging and burning of vehicles, including ambulances, and vandalism of homes. These acts have been carried out by both Israeli soldiers and settlers. Physical damage by the IDF ranges

from random gunfire at water tanks on the roofs of homes to the shelling of the municipality building at Beit Lahia, in the Gaza Strip and the shelling of the electrical plant in Ramallah, West Bank.

25. The massacre carried out in the Haram al-Sharif perhaps most dramatically exemplifies the violation of a religious site. Other sites that have been militarized, such as Joseph's Tomb, in Nablus, and Rachel's Tomb, in Bethlehem, have been the site of violent conflict, resulting in destruction and/or effective denial of the right to worship. Other incidents include the attempted burning of the church in Beit Hanina (Jerusalem) in a night raid by settlers last week and the vandalization of a synagogue at Jericho on 13 October. These incidents, beyond the violation of the right to religious expression, stand out as particularly offensive and pose the danger of exacerbating one of the most sensitive dimensions of the conflict.

Collective punishment

26. The closure and isolation of communities has been recognized as a type of collective punishment that contravenes the Fourth Geneva Convention, as does the demolition of homes and destruction of public property and facilities. Preventing workers from having access to their source of livelihood also stands as a violation of this humanitarian law principle. These acts not only result in the loss of livelihood arising from denial of the right to work, but also in the loss of public goods and services from the destruction of municipal facilities and public utilities, as noted above.

Vulnerable groups

27. In addition to those directly affected by the use of force, particular segments of the Palestinian population deserve special attention because of their vulnerability. Children in general constitute a particularly vulnerable category as they are the least equipped to cope with the psychological and other pressures of the situation and are thus often in particular need of medical attention. They may also suffer from trauma and unrest within the family. Women suffer disproportionately as a vulnerable social group and particularly as mothers coping with their role as guardians of the family and suppliers of their children's needs.

28. A category of people that have become especially vulnerable in the light of recent events are Palestinians living near settlements and in areas where the Palestinian Authority does not have a presence, such as small, isolated farmers and Bedouins. It is worth noting that, owing to their great number and the poor living conditions in the camps, Palestinian refugees are most affected by negative economic pressures and political unrest, and are central to any development of the situation.

Local perceptions

29. In general, respondents identified one of the main causes of the recent Palestinian protests as accumulated frustration at the perceived shortcomings of the Oslo process, both as to content and implementation, and notably its failure to uphold human rights and humanitarian norms. Both the local Palestinian and Israeli interlocutors consulted emphasized to the Special Rapporteur that none of the concerned parties could possibly not be cognizant of the

danger inherent in this failure: the people in the street, Israeli intelligence, the Commission on Human Rights, the various treaty bodies, the General Assembly, the Special Rapporteur, the Palestinian Authority. They lamented that, in spite of that, no corrective action had been taken.

30. Under the circumstances, all the local parties reiterated their disappointment at the international community's apparent lack of will to take substantive measures to uphold the rights of Palestinians. Moreover, they uniformly deplored the double standard that has applied to the occupied Palestinian territories of tolerating or facilitating the Israeli occupation authorities' unbroken pattern of violations. In particular, they point out the contradiction between the standards established by the United Nations and the simultaneous ineffectiveness of the United Nations in upholding its own principles. A number of common demands were forcefully put forward by practically all interlocutors for the following needed corrective action:

The de jure implementation of applicable humanitarian law and human rights standards, including the Fourth Geneva Convention of 1949 and the principal human rights treaties;

The prompt formation and dispatch of a commission of inquiry with competence to establish responsibility for violations committed by the occupying Power. A number of interlocutors recommended measures comparable to those taken in the case of East Timor;

Any peace agreement should be subject to the scrutiny and guarantee of a competent body empowered to review its consistency with human rights and humanitarian law, including United Nations resolutions on Palestine (for example, General Assembly resolution 194 (III) with respect to repatriation and compensation);

The International Committee of the Red Cross should urgently increase its presence as a measure of physical protection;

International observers and/or an interposition force should be established to ensure the physical protection of the population of the occupied territories;

The relevant thematic special rapporteurs should give special attention to the occupied Palestinian territories.

31. The grievances expressed were not devoid of a certain positive underpinning. Respondents also conveyed the hope that the losses arising from these tragic events would not have been incurred in vain. Rather they expressed the hope that a correct reading of the meaning of recent events would inspire the establishment of a fairer process capable of leading to a durable peace.

Conclusions and recommendations

32. Quite apart from any debate over the particular spark that ignited the unrest and confrontation, the Special Rapporteur remains convinced that the current conflict has its roots in accumulated grievances and resentment at the continuing violations of human rights and humanitarian norms under Israeli occupation.

33. The Special Rapporteur is particularly concerned that any progress at confidence building that had been made may be irretrievably lost, as augured by the rapid polarization that is taking place on both sides and at all levels of Palestinian and Israeli society. This signals the urgent need for the adoption of measures towards restoring confidence and rekindling hope in the peace process. One indispensable ingredient for achieving that is the establishment of a human rights framework.

34. As pointed out in the Special Rapporteur's previous report to the Commission, this prerequisite is the sine qua non of any meaningful and durable peace. In addition to their cogency, these norms, once genuinely accepted, would alone allow the sense of confidence and security that would make possible the acceptance of the indispensable and painful compromises necessary.

35. With this in mind, the Special Rapporteur offers the following recommendations for urgent action:

That the occupying Power immediately issue orders to all its forces, civilian or military, consistent with international humanitarian norms;

That those orders be rigorously implemented and that the appropriate training be provided when required;

That a permanent mechanism be established to ensure that the orders are followed and, when they are not, to determine accountability, assign punishment and redress violations;

That, to ensure the credibility of the peace process, an Ombudsman-type mechanism be established to process complaints, building on the experience of similar measures adopted in other conflict situations;

That an observer and/or guarantor body be established that, by its very presence and neutrality, would serve to build up a sense of security and confidence on both sides;

The Special Rapporteur supports the idea of establishing a mechanism for a speedy and objective inquiry into the ongoing crisis, the importance of which was stressed by the Security Council in its resolution 1322 (2000).

36. Adopting these measures would meet the most immediate needs and might afford all the parties a way out of the current impasse. However, they should not supplant the broader task that lies ahead, which involves relaunching a peace process that would include the appropriate human rights framework.